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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ICICI BANK LIMITED, NEW YORK
4 BRANCH,

Plaintiff,

5 v.

19-cv-11788 (RA)

6 VISHAL DOSHI, *et al.*,

7 Defendants.

Telephone Conference

8 -----x

9 New York, N.Y.
10 August 9, 2022
3:00 p.m.

11 Before:

12 HON. RONNIE ABRAMS,

13 District Judge

14 APPEARANCES (Via Telephone)

15 SABHARWAL & FINKEL

Attorneys for Plaintiff

16 BY: ADAM FINKEL

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1 THE COURT: Hi. Good afternoon.

2 This is Judge Abrams.

3 Who do I have on the line, please?

4 MR. FINKEL: This is Adam Finkel, for the plaintiffs.

5 THE COURT: Good afternoon.

6 First as a reminder, I just want to ensure,
7 Mr. Finkel, that you know, or anyone listening for that matter,
8 that this is a public proceeding. Members of the public and
9 the press are able to access the proceeding through the public
10 call-in number, but all participants are reminded that any
11 recording on rebroadcasting is prohibited.

12 We are here for an order to show cause as to why
13 default judgment should not be entered against the ten
14 defendants in this matter for whom a certificate of default was
15 issued: Gurudas Patwardan, Hiren Shah -- and I am going to
16 provide all this information to the court reporter in terms of
17 the spelling -- Nihar Parikh, Shreyas Doshi, Vishal Doshi,
18 Darshan Banuchandra Shah, Geeta Doshi, Trezza Jewels LLC,
19 Genashi Gems Private Limited and Rachna Doshi.

20 Although defendant Sanjay Shah appears to remain this
21 the case, I want to confirm with plaintiff that no certificate
22 of default was ever filed as to that defendant.

23 MR. FINKEL: I don't believe so, your Honor.

24 THE COURT: Okay. All right. That's what I thought.

25 Thank you.

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1 It is now about 3:06. It is a little bit after 3. No
2 one has appeared on behalf of defendants. Since we are remote,
3 I am just going to call out again and ensure that no one is
4 here on behalf of any defendant in this action, 19 Civ. 11788.

5 Let the record reflect that there was no answer.

6 This conference was set for 3 p.m. That being said,
7 for the reasons that follow, I am denying plaintiffs' motion
8 for default judgment, albeit without prejudice, and I am going
9 explain why.

10 Before entering a default judgment against a defendant
11 under Federal Rule of Civil Procedure 55(b)(2), the Court must
12 be satisfied that the defendant's liability is established as a
13 matter of law when the factual allegations of the complaint are
14 taken as true.

15 Because plaintiffs' RICO claims are their only federal
16 causes of action, I am going to review them first.

17 A civil RICO plaintiff must plead facts showing that
18 the defendant through the commission of two or more acts
19 constituting a pattern of racketeering activity directly or
20 indirectly participates in an enterprise affecting interstate
21 or foreign commerce.

22 The Second Circuit has made clear that the
23 requirements of Section 1962 must be established as to each
24 individual defendant. That is actually a quote from *De Falco*
25 *v. Bernas*, 244 F.3d 286 at 306. Accordingly, district courts

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1 in this circuit require plaintiffs who assert Section 1962(c)
2 claims to allege that each defendant committed at least two
3 predicate acts of racketeering activity. And that's a quote
4 from *Brewer V. Village of Oldfield*, 311 F.Supp.2d 403. I am
5 going to skip all the string cites because I think that case
6 adequately states the rule.

7 This is consistent with Rule 9(b)'s particularity
8 requirement where multiple defendants are charged with fraud.
9 That is a quote from *Jerome M. Sobel & Company v. Fleck*, 2003
10 WL 22839799 at *6. To meet this standard, the complaint must
11 adequately specify the statements it claims were false or
12 misleading, give particulars as to the respect in which
13 plaintiff contends the statements were fraudulent, state when
14 and where the statements were made, and identify those
15 responsible for the statements. That is a quote from *Cosmas v.*
16 *Hassett*, 886 F.2d 8, at 11. Moreover, plaintiffs must allege
17 sufficient facts showing each defendant's knowing or
18 intentional participation in the alleged scheme to defraud.
19 That is a quote from *Williams v. Equitable Acceptance*
20 *Corporation*, 443 F.Supp.3d 480, 492.

21 Reviewing the complaint's allegations with respect to
22 the defaulting defendants, I find that plaintiffs have not
23 alleged what any particular defendant did to advance the RICO
24 scheme with sufficient particularity. That is in part a quote
25 from *Lundy v. Catholic Health System of Long Island*,

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1 Incorporated, 711 F.3d 106 at 119.

2 First, the allegations in the complaint regarding
3 Hiren Shah, Shreyas Doshi, Darshan Shah, Geeta Doshi and Rachna
4 Doshi are plainly insufficient. For each of these individuals
5 plaintiffs allege only that at all relevant times they were
6 control persons of several related business entities engaged in
7 a worldwide pattern of racketeering and fraudulent activity and
8 that they all acted in concert and conspiracy with other
9 defendants to further the pattern of racketeering and
10 fraudulent activity. These conclusory statements do not come
11 close to alleging that these defendants committed two or more
12 predicate acts with requisite intent. Indeed, plaintiffs do
13 not allege these defendants engaged in any conduct or played
14 any role. And that is a quote from *Zamora v. J.P. Morgan*
15 *Chase*, 2019 WL 3401693.

16 The complaint also alleges that Shreyas, Geeta,
17 Rachna, and Darshan controlled Genashi, a company that
18 allegedly received funds from the fraudulent scheme. But,
19 again, this bare and conclusory allegation is insufficient to
20 allege these individuals' knowing fraudulent conduct with
21 adequate particularity.

22 For similar reasons, the allegations regarding the two
23 corporate defaulting defendants Trezza Jewels LLP and Genashi
24 Gems Private Limited are insufficient. Plaintiffs allege that
25 the proceeds from the fraudulent scheme were funneled into

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1 these companies. But those allegations are conclusory and do
2 not meet Rule 9(b)'s particularity standard.

3 I will say that it is a closer call for defendants
4 Nihar Parikh, Vishal Doshi, and Gurudas Patwardhan, because in
5 addition to the conclusory paragraphs about these defendants,
6 plaintiffs attach to their complaint a receiver report that
7 states that the "loose diamond sales were managed and directed
8 by Nihar Parikh and certain individuals at Simon Golub's parent
9 company, Shrenuj, and that the Shrenuj individuals were Vishal
10 Doshi, Sanjay Shah, and Gurudas Patwardhan.

11 Plaintiffs also allege that Nihar was the de facto CEO
12 of SG and the CEO of Trezza. But, even here, alleging only
13 that the diamond sales that were part of the fraudulent scheme
14 were managed and directed by these individuals does not
15 adequately allege precisely when and how any one of these three
16 individuals committed at least two predicate acts of mail
17 fraud, wire fraud, or bank fraud over a period of at least two
18 years.

19 Rule 9(b) is not satisfied where the complaint vaguely
20 attributes the alleged fraudulent statements to defendants.
21 That is a quote from *Mills v. Polar Molecular Corporation*, 12
22 F.3d 1170, 1175. Indeed, other courts have found RICO claims
23 insufficient when the pleadings do not indicate individually
24 which of three defendants actually engaged in a particular
25 predicate acts of mail or wire fraud offenses that plaintiffs

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1 allege constitutes a pattern of racketeering, reasoning that
2 such group pleading does not comply with the requirements of
3 RICO or the particularity standards of Rule 9(b).

4 The allegations here are similar in that plaintiffs
5 attribute all the fraudulent conduct to defendants as a group
6 without making any attempt to allege which defendant committed
7 what conduct. These bare-bones allegations do not satisfy the
8 requirement of Rule 9(b) or the substantive requirements for
9 stating an individual defendant's RICO liability. See *Lundy v.*
10 *Catholic Health System of Long Island, Incorporated*, 711 F.3d
11 at 119.

12 I realize that plaintiffs have submitted affidavit
13 that allege further facts about individual defendants involved
14 in the scheme, but I cannot consider facts that were not
15 contained in the original complaint for purposes of determining
16 liability.

17 Even though some of plaintiffs' allegations come close
18 to stating a claim with sufficient particularity, I am not
19 willing to grant default judgment based on those borderline
20 allegations, particularly given the amount of money plaintiff
21 seeks on its RICO claims, \$18 million plus interest, costs,
22 attorney's fees and treble damages.

23 The Court has significant discretion to consider a
24 number of factors in deciding whether to grant a default
25 judgment, including the amount of money potentially involved.

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1 The more money involved, the less justification for entering
2 the default judgment. That is a quote from *Premium Sports*
3 *Incorporated v. Alzate*, 2011 WL 1240558 at *3.

4 Accordingly, I am denying plaintiff's default judgment
5 with respect to their RICO claims.

6 Because there is not complete diversity between the
7 parties, subject matter jurisdiction hinges on a federal cause
8 of action. As I'm dismissing plaintiffs' claims that arise
9 under federal law, I decline to exercise supplemental
10 jurisdiction over the state law claims. See *Carnegie-Mellon*
11 *University v. Cohill*, 484 U.S. 343, 350, n. 7.

12 Accordingly, I dismiss plaintiffs' complaint in its
13 entirety. I will, however, do so without prejudice and allow
14 plaintiff to file an amended complaint if they can cure their
15 pleading deficiencies in good faith.

16 Plaintiff must file their amended complaint in two
17 weeks from today. Failure to file by then will result in my
18 dismissing the case with prejudice, although of course
19 plaintiffs can refile their state law claims in state court if
20 they so choose.

21 That's my ruling.

22 You can and should get a copy of my reasoning from the
23 court reporter's office, as the court reporter has of course
24 transcribed the proceeding today.

25 Are there any other applications, Mr. Finkel, at this

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1 time?

2 MR. FINKEL: Not at this time, Judge.

3 THE COURT: Okay. Thank you.

4 All right. Have a good afternoon.

5 MR. FINKEL: You too.

6 THE COURT: Bye.

7 (Adjourned)